

ISSUE
SUB-ISSUES

ISSUE SHEETS WITH VARIOUS PARTIES' POSITIONS
OCTOBER ~~13~~16, 2006

1. Legislative Perspective

Importance of looking at the
RFP package in totality
(Size, security, product, credit)

DELMARVA VIEWPOINT

(A) Provide an RFP for
Delaware generation that falls
within the energy and capacity
needs of ~~meets the base~~ SOS
~~customers, load requirements,~~
~~while~~ minimizing
company/customer risk and is
reasonable for a Company of
Delmarva's Delivery Company
energy management
requirements.
Max Contract Size 200MW
Investment Grade Co. Only
Firm energy/capacity

STAFF VIEWPOINT

(B) Provide an RFP seeking
Delaware generation that
provides opportunity for broader
bid competition, sharing of risk
between Company/customer
and bidders with requirement
for increased Delivery Company
energy management services.
Max Contract Size 400MW
Investment Grade Co. with
options for non-investment
grade companies
Option for firm energy or unit
contingent capacity/energy

State Agencies may determine to approve 1 or more of submitted projects.

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STAFF (Position is reflected in the Independent Consultant Report as filed on Oct 12, 2006. Other party comments

Staff, in adopting the State Agencies' Independent Consultant's Report, filed on October 12, 2006, believes the Legislation sought input from a wide variety of potential bidders, understood the possibility of increased company/customer risk and provided opportunity for Delmarva Power, as the SOS provider to manage energy requirements in a wide variety of ways. Staff supports an RFP for 400MW with flexibility in meeting credit requirements and in the bidding of energy/capacity as recommended by the State Agency Independent Consultant. Staff further asserts that Delmarva, as evidenced by the legislation, was provided with a myriad of ways in which to manage its SOS supply requirement and will ultimately, even as a Delivery Company, have to apply resources to this effort. Staff further notes that Legislation provides that state agencies may approve 1 or more projects contracts, but are not required to do so.

DELMARVA

Delmarva asserts its package, [with a 25/200MW min/max sizing] taken as a whole, is needed to best protects SOS customers and meetsfully complies with -House Bill No. 6. Consultants report does not do so as the - Rpt fails to preserve relationship between bid block size, corporate structure, security requirements and risk of default. Rpt fails to provide for diversity of bids and suppliers to serve SOS customers and encourages mega-block bidding, and fails to recognize the legislative requirement that 30% of Delmarva's supply be sourced from a separate bid/auction process. Rpt fails to provide price stability or reasonable prices. Consultant failed to adhere to legislative mandate of House Bill No. 6. . Delmarva to rank bids subject to Agency and PSC review, after Agency and IC review of key input assumptions.

NRG ENERGY

Consultant's report well informed and clearly written and generally accepted

SCS ENERGY

Recommendations in the consultants report are vital to making the RFP consistent with the Legislation

DEUG

House Bill No. 6 mandates an RFP process for what SOS customer classes? The load intended to be served is only residential and small commercial, not industrial and hourly-priced SOS.

BLUEWATER WIND

Offered redline copies of the State Agencies' Consultant report and pointed out that "pursuant to the Act, Delmarva will enter into one or more PPAs as a result of this RFP regardless of the IRP." BWW strongly recommends this as being necessary in order to obtain serious, quality bids, as it better ensures that there will in fact be a winner, and a PPA will be entered into in a timely fashion.

DEPT OF PUBLIC ADVOCATE

Delmarva's RFP meets the minimum requirements of the supply act; however, the RFP is narrow when juxtaposed with the overall energy policy of the General Assembly, as demonstrated over the last two legislative sessions.

FIRESTONE & KEMPTON

Alleged "Staff Report." Commission filed consultants report in lieu of its own report. Staff lacks authority to delegate its authority to a private entity. Consultants report is improvement in some respects. For the most part rubberstamps the business as usual approach

GREEN DELAWARE

Substantially dissatisfied with Draft Report. Little indication that public comment was considered. Agree with Firestone comments. Rpt represents small steps in right direction but major issues remain unresolved and not ready for Commission review.

WHAT IS THE APPROPRIATE LEGISLATIVE PERSPECTIVE AS PROVIDED IN DEL.C. 26 §1007?

Staff Position reflects the Independent Consultant's (ICs) Final Report as filed on 10/12/06. Other parties comments are from initial response to Delmarva RFP and later response to the IC's draft report.

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2. Company/Customer Risk

Company Concerns

- **Need for Pre-Approval cost recovery.**
- Legislation permitting recovery of costs
- **Required Investment Grade for bidder**
- Potential risk of credit downgrade

SOS Customer Migration risk

- Stranded profit/costs
- Impact on contract size

Firm energy purchases vs unit contingent

- Paying Generator to provide exactly what is needed
- Managing capacity/energy shortfalls or excess

Customer Risk

- Customer price risk
- Complementary risk controls
- Valuation of risk
- **Loss Under Probability of Default**

STAFF

Staff is quite aware of the risk factors in entering into long term purchase power agreements and believes the best approach is a sharing of the risks between buyer and seller. If either parties' interests are at high risk, then neither will be able to enter into such a contract. If the seller's risks are too high, it could result in fewer bidders, higher bid prices and could jeopardize a seller's ability to perform. Staff believes the legislature was well aware of the difficulty of entering into longer term contracts, recognizing that contracts, no matter how conceived are a sharing of risk and reward for both parties. Staff agrees with the consultants report in this regard and supports the consultant's approach to establishing appropriate risk levels for Delmarva and Delaware energy consumers that are fair and balanced. Staff supports the allocation of 6 evaluative points to a category called exposure which takes into consideration not only the creditworthiness of the seller, but also the size of the proposal and the portion that is non dispatchable (capable of ramping up or down). One should keep in mind that a contractual default, for the most part, merely exposes the buyer to current market price for replacement power. Moreover, there is substantial security required of the Seller to cover Delmarva claim for damages (in whole or in part).

DELMARVA

Rpt fails to recognize Delmarva's inability to provide an adequate credit cushion and risks further downgrade. Rpt fails to address potential migration risks and places substantial new risk on customers. Security requirements are critical to protect consumers. Delmarva would not limit total damages during the development period to the \$85/kw delay damage limit, as development risks and delay risks impose different risks on customers. Rpt imposes additional risk and exposure on customers without mitigation. IC's report would shift financial and economic burdens of large contracts from supplier to customers. Collateral would not be sufficient to cover exposure, leading to higher credit risks. The company must recognize the Loss of Probability Under Default, in light of both Company and industry experience. Assigning fewer points to large projects, as suggested by the IC, is simply an evaluation criteria. If such a project is still selected, this would not reflect the real risk to customers during operation of a large project.

~~Rpt fails to recognize Delmarva's inability to provide an adequate credit cushion and risks further downgrade. Rpt fails to address potential migration risks and requires reallocation of risk. Company security requirements are critical. No intermittent capacity energy recognition. No \$85/kw delay damage limit. Rpt fails to mitigate customer risk. IC's report would shift financial and economic burdens of large contracts from supplier to customers. Collateral may not be sufficient to cover exposure leading to higher credit risks. Company opposes the elimination of LUPD and 5 Price Stability points assigned on size~~

DEUG

No stranded or other costs of this RFP process should be borne by customer classes whose load is not intended to be served, such as larger commercial, industrial, and hourly-priced customers. The Commission should find and recognize that many of the proposals in this docket could lead to higher costs of SOS service.

OTHER

This report appears to put the risks of adverse health impacts from toxic air emissions and climate change squarely on the backs of the citizens.

DELAWARE ENERGY USER'S GROUP

The Commission should find and recognize that many of the proposals in this docket could lead to higher costs of SOS service.

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WHAT IS THE
APPROPRIATE LEVEL OF
RISK TO THE COMPANY,
DELAWARE RATEPAYER
AND POTENTIAL BIDDER?
NEED FOR PRE-
APPROVAL FOR
RECOVERY OF COSTS?
SHARED RISK BY VIRTUE
OF LESS
CREDIT/SECURITY
REQUIREMENTS?
ENVIRONMENTAL
HEALTH RISKS?

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3. RFP & IRP Relationship

STAFF

Tying the RFP process into the IRP process should not result in lengthy delays and uncertainty. Staff agrees with the Independent Consultant's report that there is a reasonable likelihood that the State Agencies will have sufficient information from the RFP evaluation, as well as any input from the IRP filing, to make a decision by February 28, 2007. If more time is needed Staff agrees that the Commission should set forth a schedule to make a final decision within a period not to exceed another 2 months. While Delmarva advised that it will amend the IRP to include the RFP results, Staff advises that such update needs to be well in advance of the completed reports.

DELMARVA

Delmarva proposes to take the highest rated projects, resulting from the RFP evaluation, and to incorporate them into the IRP for further evaluation against alternative sources of supply. The IRP will be amended after the December 1, 2006 filing with the results of the RFP.

NRG ENERGY

DPL's criteria for evaluating bids against its own Integrated Resource Planning ("IRP") are not transparent and balanced. Delmarva's reasoning for a 200 MW unit appears to be that EURCSA's [Energy Supply Act] requirement for at least 30 percent of SOS to be obtained through a wholesale market bid and auction process is reserved for the IRP and is not to be considered in the RFP process. NRG's view is that the IRP is a comprehensive process that contains within it an RFP process designed to test the markets for the best supply options. Under EURCSA, the IRP and RFP are not separate and parallel tracks for meeting SOS needs.

BLUEWATER WIND

The Proposed RFP assumes that proposals received will have to be considered entirely within the context of DP&L's first Integrated Resource Plan (IRP), when in fact H.B. 6 is abundantly clear that this RFP for new power plant construction is to take place in addition to —and conceivably even prior to— any other types of procurement that might result from the IRP. Bluewater Wind pointed out that "pursuant to the Act, Delmarva will enter into one or more PPAs as a result of this RFP regardless of the IRP." BWV strongly recommends this as being necessary in order to obtain serious, quality bids, as it better ensures that there will in fact be a winner, and a PPA will be entered into in a timely fashion.

~~DELAWARE ENERGY USER'S GROUP~~DEUG

Cost of the IRP and RFP processes, and of any PPA, relates solely to the provision of SOS service and should not be assigned to distribution service. Cost of the IRP and RFP processes, and of any PPA, do not relate to hourly priced SOS service and should not be assigned to hourly priced SOS rates. . Cost of the IRP and RFP processes, and of any PPA, relate solely to the provision of SOS service, and should not be assigned to a nonbypassable surcharge.

FIRESTONE & KEMPTON

To understand why the Legislature included cost as a factor in integrated resource planning but not as an RFP criterion, it is important to recognize the fundamental difference between integrated resource planning and the RFP. First, the integrated resource plan (IRP) is broader than the RFP in that it concerns not only RFPs to obtain long-term power supply contracts, but short-term supply contracts, spot market purchases, self-generation, transmission and demandside management as well. See sections 1001(13) and 1007(c)(1). The Legislature thus wisely directed Delmarva to consider cost in its choice among these various options to meet supply. In contrast, the Legislature has already made a determination on how Delmarva can best meet the immediate need for supply—that is, it directed Delmarva to issue an RFP for long-term supply.

WHAT IS THE RELATIONSHIP BETWEEN THE RFP AND IRP AS CONTEMPLATED IN THE LEGISLATION?
IS THERE A RELATIONSHIP? HOW ARE THE TWO PROCESSES RELATED?

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4. Contract/Project
Size/Location

- Variability of electricity production/usage
- **Max and Min**
 - Large IGCC or other plants
 - Small renewable generators
- Projected load at time of service
- **Firm capacity-energy vs unit contingent**
- **Baseload, peaking, load following**
- Economic viability of project
- Full requirements
- Customer Financing vs customer need
- **Legislative location requirement.**

STAFF

To balance the need for economic generation bids with the level of SOS load, Staff recommends a maximum size of 400MW. In projecting SOS load with and without weather normalization and with up to a 15% migration, it would appear that a capacity of between 350MW and 400MW would be appropriate. A larger contract could potentially require Delmarva as a Delivery Company to provide more extensive energy management services but Staff feels this is within the legislative direction establishing Delmarva as the SOS provider. There should be no minimum size as it limits participation of smaller renewable projects.

DELMARVA

The maximum project size in the IC's Report and Revised RFP fails to tie procured Megawatts to SOS customer load, and fails to recognize the magnitude of migration risk if the project's cost is above market, especially for a larger project, resulting in much higher financial risks that customers do not currently bear. Any size above 200 MW will require Delmarva to engage in spot and short-term energy sales that put customers at risk and for which bidders are much better suited. Recommended size does not provide room for diversity of supply as required by Legislation. The goal of the RFP should not be for customers to help finance a private project, while disregarding customer needs. Must have minimum 50/25 MW sizes to have a meaningful impact on price stability. Smaller renewable projects should look to Delaware RPS for opportunity. Must deliver to the Delmarva zone.

~~IC's Report and Revised RFP fails to tie procured MegaWatts to SOS customer load. Rpt fails to properly consider contract size and minimum project size. Results in much higher financial risks. Does not provide room for diversity of supply as valued by Legislation, including demand response, energy efficiency, etc. Customers should not have to help finance a private project. Must have minimum 50/25 MW sizes. Smaller renewable projects should look to Delaware RPS for opportunity.~~

NRG ENERGY

400 MW limit with proportional loss of points for non-dispatchable lack clear rationale and sufficient foundation. Provides illusion of fairness and does not serve Act's goals. 400MW is a suboptimal size and could add costs for SOS customers. Consultant should perform analysis on ability of generation companies to obtain financing with only a 63.5% fixed contract

SCS ENERGY

Size limit is unjustified and should be at least 600 MW. Size limit does not limit customer exposure. PPA limits customer exposure. IC report achieves objective by recommending an exposure category valuation.

DEUG

Proper size of RFP (200 vs. 400 MW) is related to 1000 MW peak of residential and small commercial classes. PSC should find that costs of RFP process should not be borne by other classes.

BLUEWATER WIND

Proposes 600 MW limit for wind. Suggested location wording - "For New Generation in or on Delaware's jurisdictional portion of the Delaware Bay or the Atlantic Ocean, whether the waters of the State of Delaware or the Waters of the United States or within its defined Exclusive Economic Zone from 12 to 200 Nautical Miles, "in Delaware" shall mean that the New Generation's power cables make landfall within the State of Delaware and originate in Delaware and or Federal waters only."

FIRESTONE & KEMPTON

Agrees with 400MW size limit, but not sure whether it is an average energy limit or capacity limit. Size of Cape Wind project not relative to Delaware. Developer should have option of bidding 900 MW wind farm with 40% capacity factor which would be equivalent to a 360 MW plant with 100% capacity factor. Report clarifies "Delaware

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Generation” Projects that expose Delaware and its residents to those impacts [pollution for energy being sold out of state] should be disfavored in the evaluation process.

WHAT'S THE
APPROPRIATE PROJECT
TO BE EVALUATED?
MAX/MIN SIZE? FIRM
CAPACITY ENERGY
AND/OR UNIT
CONTINGENT?
BASELOAD AND/OR LOAD
FOLLOWING?
DEFINITION OF “IN
DELAWARE?”

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5. Product for Purchase

Firm vs Unit Contingent Energy

- UCAP vs adjusted UCAP
- Attributes required vs available
- **Option for replacement power**
- Potential for stranded costs/profits
- Network Resource designation
- **Capacity price indexing**
 - Widely recognized
 - Reflects actual cost increases
 - Lower price stability on evaluation
- Timeframe for indexing
- **Initial Capacity Delivery Reqmt.**
Full capacity day 1
Capacity step-in

STAFF

Staff supports the consultant's view that bidders should have the option of bidding firm energy as requested by Delmarva or unit contingent energy as preferred by the bidders. ~~The use of PJM UCAP is appropriate, with adjustments for pricing purposes to provide stronger incentives for high performance during peak periods. The use of PJM UCAP, adjusted for planned outages is appropriate.~~ Delmarva should purchase only the attributes needed to comply with current laws and regulations. In the case of a unit contingent bid, payments to the seller would be adjusted downward for poor performance through capacity payment adjustment provisions and Delmarva should be authorized to provide replacement energy in ~~its the~~ most cost effective manner (or have this managed through an energy marketer). While this has potential for profit or loss depending on the energy source and application of contract provisions, it is within the purview of Delmarva's responsibility. Generators should not have the option to provide replacement power. Capacity price indexing can be permitted; however, it must be known, well established indexes and will be less valued than a non indexed price. With regard to initial capacity, Staff supports the consultant's report that bidders should be able to offer capacity on a schedule that they believe is achievable. Such offers will be valued accordingly.

DELMARVA

~~Report does not require firm energy, leading to significant economic and supply risk that customers do not currently bear. Generators are best able to bear such risks. The Company has solicited and been provided with firm energy in the past, and suppliers have provided such power. The need to potentially secure replacement power risks considerable stranded costs, especially for large projects. Purchase of firm supply rather than unit contingent power is in the best interest of SOS customers, and will minimize costs and risks. Product must include PJM UCAP. Delmarva requires only the ancillary services and environmental attributes required to serve SOS. Company agrees to capacity indexing between bid and contract times with limits, but no capacity price indexing during the term of the contract (energy indexing is acceptable). For new technologies, unsure of capacity, Delmarva suggests bidders bid lower capacity availability to reflect uncertainty.~~
~~Report does not require firm capacity energy, leading to increased economic and supply risk. Need to secure replacement power risks stranded costs. Purchase of firm rather than unit contingent is in the best interest of SOS customers. Delmarva SOS customers need a firm (full requirements) contract from a generator to minimize costs/risks. Product must include PJM UCAP. Delmarva Power requires only the ancillary services and environmental attributes required to serve SOS. Company may support capacity indexing between bid and contract times with limits, but no contract price indexing. For new technologies, unsure of capacity, Delmarva Power suggests bidders bid lower capacity availability to reflect uncertainty.~~

NRG ENERGY

~~Favors ability to bid unit contingent power. Favors use of unity contingent product. Seller should have replacement option and should be handled in PPA. For every hr of replacement power made available, seller should get capacity payment. Delmarva offers and consultant agrees with disparate treatment in Network Resource designation.~~
The Product under the PPA should be an Unforced Capacity product (*i.e.*, failure to deliver causes reduction in capacity payments independent of real time energy prices). NRG recommends that Sellers have the right, but not obligation, to provide replacement power to pre-approved alternative Delivery Points. Delmarva's payment obligation for new capacity acquired pursuant to the RFP should be made more flexible so that bidders utilizing newer technologies will not be disadvantaged. Seller should have replacement option and should be handled in PPA. For every hr of replacement power made available, seller should get capacity payment. Delmarva offers and consultant agrees with disparate treatment in Network Resource designation.

SCS ENERGY

Agrees with unit-contingent bid opportunity. Generator requirement for replacement power would impair financeability. Generator retention of emission allowances is critical to attract bidders

BLUEWATER WIND

Staff Position reflects the Independent Consultant's (ICs) Final Report as filed on 10/12/06. Other parties comments are from initial response to Delmarva RFP and later response to the IC's draft report.

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The Proposed RFP appears to limit proposed projects to 200MW of nameplate generation *capacity*. The RFP should recognize that different generation technologies deliver different amounts of energy for a given nameplate capacity. Bluewater Wind cordially notes again that if the PPA requires the purchase of environmental attributes, [other than Renewable Energy Credits \(RECs\)](#), the Buyer is effectively acquiring a valuable product for no cost (or penalizing a renewable generator if it proposes to sell the attribute at value.)

WHAT IS THE
APPROPRIATE PRODUCT
TO BE PURCHASED AND
HOW SHOULD IT BE
DESCRIBED?
FIRM ENERGY AND/OR
UNIT CONTINGENT?
WHO PROVIDES
REPLACEMENT POWER?
SHOULD INDEXING BE
PERMITTED THROUGH
IN-SERVICE DATE? CAN
BIDDERS OFFER A STEP-
IN CAPACITY
ARRANGEMENT?

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6. Delivery Point

- Generator bus vs any interconnection point
- **Gen bus interconnection point vs aggregated zone bus**
- **Who pays for congestion/losses**

STAFF

Staff concurs with the Independent Consultant's report [which agrees with Delmarva that the preferred approach is that costs of congestion and marginal losses should be the responsibility of the generator in similar fashion to existing SOS 3rd party contracts. Generation is delivered to the aggregate Delmarva Zone bus at the accepted bid price. However, bidders should have the option to deliver to a bus within Delaware, but the cost of losses and congestion will be taken into consideration in the price and price stability analysis. Costs of congestion and marginal losses may be bid either inclusive or exclusive; however, bidders who elect delivery at their local generation bus would be less valued in the evaluation.](#)

DELMARVA

Delivery point must be in the Delmarva Zone.

NRG ENERGY

The Delivery Point should be changed to properly allocate risks between Seller and Buyer. The Delivery Point for all Energy delivered under the PPA should be the Project's bus bar so that risks of congestion and marginal losses are not borne by the Seller. Although NRG agrees that marginal transmission losses and congestion should be considered in the bid evaluations, NRG respectfully submits that the Independent Consultant has not addressed the issue fully. NRG respectfully suggests that the Commission requires that Delmarva's evaluation of marginal losses and congestion fully take into account these network upgrades. Moreover, in situations where the difference between a winning and losing bid is determined by Delmarva's modeling of transmission losses and congestion, the interests of Delmarva's SOS customers would best be served if the competing bidders were offered the right, but not the obligation, to propose further transmission

BLUEWATER WIND

In the case of an offshore wind electricity generator, the "Delivery Point" shall be the point where the interconnection cable crosses into the waters of the State of Delaware at three (3) Nautical Miles from Delaware's coastline. The buyer is responsible for any congestion or marginal losses, as the buyer is in a better position to control these risks.

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WHO PAYS FOR POSSIBLE
CONGESTION AND
MARGINAL LOSSES
BETWEEN THE
GENERATOR'S (SELLER'S)
BUS AND THE DELMARVA
ZONE AGGREGATE BUS?

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7. Standard Form PPA

- Available Nov 1, 2006

STAFF

Staff supports the consultant's recommendation that a standard form of power purchase agreement should be available for bidders and suggests that Delmarva make such document available no later than 10 business days after approval of the Terms and Conditions (a part of this proceeding).

DELMARVA

Delmarva sees no value in making the PPA ~~Should not be required to make~~ available prior to finalizing term sheet. Could make available 10 days after terms and conditions approval. Terms should be non-negotiable

SHOULD BIDDERS HAVE ACCESS TO A STANDARD FORM PPA AND/OR WHEN SHOULD IT BE AVAILABLE?

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8. Regulatory Out Clause

- Regulated industry practices vs competitive
- Potential risk of downgrade

STAFF

Staff supports the Independent Consultant's position. Regulatory out clause may be appropriate in the terms and conditions, but only until the four state agencies approve a PPA([a "regulatory approval" clause](#)). Any regulatory out after approval of the PPA can [and will](#) be problematic for all bidders.

DELMARVA

Modification is contrary to long standing contracting practices in regulated industries. Could lead to downgrade. Without such a provision, the Company could be compelled to accept substantial costs for which it would not be compensated, or at least become part of a protracted dispute over such costs. Dropping this clause would give developers a "green light" to put future costs onto Delmarva's balance sheet, and could lead to downgrade

NRG ENERGY

As currently drafted, the "Regulatory [ApprovalOut](#)" provision of the PPA would eliminate the ability of a project company to obtain financing consistent with traditional project financing structures and terms.

SCS ENERGY

Clause defeats purpose of legislative act and will limit support of bidders

IS A REGULATORY OUT CLAUSE NECESSARY AND/OR APPROPRIATE?
PRIOR TO PPA APPROVAL AND/OR AFTER PPA APPROVAL?

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9. Bidder Threshold Reqmts

- NOI by Nov 22
- **\$10,000 non-refundable filing fee**
- **Investment grade only**
- **Net worth reqmt**
- Demonstrated financial ability
- **Acceptance of variable interest entity**
- Site owned or ability to acquire
- Permit schedule & ability to comply
- Preliminary Engineering plan
- **Agreement with terms sheet**
- ~~Posted security (no DP&L margin)~~

STAFF

Non-refundable filing fee should be a graduated filing fee for smaller project proposals. There should be options for non-investment grade or lower net worth companies that cannot meet Delmarva's reqmt... Delmarva needs to clarify its standards on Variable Interest Entity (VIE) assessments and the basis for triggering VIE treatment. [Delmarva RFP](#) should identify non-negotiable items on term sheet ([such as levels of required security](#)) and bidders should be able to disagree with any other items, subject to review/negotiation. Bidders should have options for meeting threshold requirements.

DELMARVA

~~The bid fees proposed by the company are reasonable and customary for the industry. Agree to accommodate offshore wind, if they can show application for required permits and likelihood of approval. Delmarva agrees to provide a list of key issues from the Term Sheet and to provide a standard contract based on the Commission's decision. Delmarva can not rely solely on collateral to fully protect customers from nonperformance; therefore, an investment grade rating threshold reduces the probability of nonperformance and the risk of default. A non-investment grade company is approximately 10 times more likely to experience default as an investment grade company. The bid fees proposed by the company are reasonable. Offshore wind project siting requirement needs to be balanced with onshore requirements~~

NRG ENERGY

As currently drafted, we seriously doubt that the RFP would allow NRG to bid because: (a) the bid size is too small; (b) the terms are not financeable; (c) DPL's criteria for evaluating bids against its own Integrated Resource Planning ("IRP") are not transparent and balanced; (d) the required security is unreasonably excessive; and (e) limiting bidders to only investment grade entities effectively bans not only NRG, but virtually all otherwise experienced and qualified bidders. The proposed RFP contains a number of provisions that run counter to this result, including by effectively disqualifying bidders that are not investment grade.

SCS ENERGY

SCS strongly agrees with the threshold recommendations in the initial consultant's report concerning credit requirements, but would ask the consultant and PSC to revisit security requirements that remain onerous. The RFP should not purport to resolve Delmarva's accounting issues as it does with variable interest entity. The implications of FIN-46 and the balance sheet impact of the PPA are legitimate issues for Delmarva Power, but they are highly sensitive to the structure of the PPA and the underlying regulatory context. Do not consider an imputed debt in the RFP process.

BLUEWATER WIND

Delmarva should provide some guidance as to standards it plans to use in making assessments on Variable Interest Entity treatment

DEPT OF PUBLIC ADVOCATE

That the "bid fee" be reduced from ten thousand dollars, (\$10,000) to three thousand dollars, (\$3,000), The DPA is concerned that the threshold requirements of the RFP, such as, credit, accounting, security, contract, and safety may be so limiting that the only qualified bidder in the state will be Conectiv Energy Supply, Inc., ("CESI"), another wholly owned subsidiary of Pepco Holdings, Inc.

FIRESTONE & KEMPTON

Project viability should be a threshold issue, not a rating. [The RGGI should be a threshold criterion. By this we mean that no project should be selected if its operation will result in the emission of any CO2 unless the project will displace equivalent emissions from electrical generation \(that would not have to retire for other reasons\) and the quantity of CO2 emitted will be less than that emitted by the displaced generation.](#)

OTHERS

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Consultant coordination on threshold requirements appears to give inordinate power to the independent consultant.

WHAT THRESHOLD REQUIREMENTS ARE APPROPRIATE FOR A DELAWARE RFP? NON-REFUNDABLE FILING FEE? NET WORTH REQUIREMENT? VIE CLARIFICATION? TERM SHEET FLEXIBILITY?

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10. Security

Levels of adequate security

- Development period security
- Parent guarantee vs letter of credit
- Operational security of \$100/kw
- Limit of \$100/KW of Max Capacity
- Limited Security vs size and other changes

Development and Delay

Damages

- Delay or missed milestones
- Delay of initial delivery
- \$100/kw security during development
- \$85/kw damages for delay
- **Exposure of Company and customers to uncompensated costs**

Milestones/Liquidated Damages

STAFF

Staff adopts the Consultant's report with regard to security requirements. Development period security of \$100/kw based on letters of credit is reasonable and should be in an acceptable form to Delmarva. Intermittent energy projects should only pay a 40% pro rata share based on their relatively low~~an assumed~~ capacity factors and UCAP. Staff agrees with an operational security cap of \$200/kw, with a letter of credit from non-investment grade companies and possible parent guarantee from investment grade companies, dependent on Delmarva's credit formulas (non-investment grade companies would need to post a letter of credit of \$200/kW). Staff further supports the concept of second lien, with a requirement that provided a first lien covers no more than 70% of the project.

DELMARVA

Proposed changes to security requirements would add unacceptable risks for consumers, particularly:

- Parent guarantee for development period security
- Reduced security for intermittent energy projects, as this would be discriminatory and inappropriate

Size of unit, term sheet and PPA should be scaled to match weakened security requirements. That is, if Delmarva is required to accept less security, the maximum project size should decrease below 200 MW. For missed milestones, Delmarva proposes 6 month extension with higher penalties. Milestone arrangement tailored to project. \$50/kw liquidated damage limits vs all direct damages. According to Delmarva, history has shown that weak credit and security requirements expose utilities and their customers to massive damages. In recent years, Enron, Calpine, USGen, Mirant, NEG and NRG have each filed for bankruptcy protection. In many of these cases, in addition to the project-level entity, the parent/guarantor also filed for bankruptcy protection. Thus, a parent guaranty does not provide the same protections as a letter of credit and is largely irrelevant if the parent files for bankruptcy.

Proposed changes to security requirements and unacceptable, particularly:

- Parent guarantee for development period security
- Reduced security for intermittent energy projects \$100/kw limit

Size of unit, term sheet and PPA should be scaled to match weakened security requirements

For missed milestones, Delmarva proposes 6 month extension with higher penalties. Milestone arrangement tailored to project. \$50/kw liquidated damage limits vs all direct damages.

NRG ENERGY

The Security Requirement proposed in the RFP for operational projects should be revised so as to not be overly burdensome on bidders. The security requirements contained in the RFP do not comport with our experience of similar solicitations and are likely to discourage credible bidders in the Delaware process.

SCS ENERGY

Agrees with consultant on credit requirements. Asks PSC to revisit requirements that remain onerous (\$100/kw security). Sees no basis for damage due to missed milestones, only for missed delivery date. Delmarva suffers no damage for project milestone delays

BLUEWATER WIND

Bluewater Wind reiterates its proposal that a second lien be utilized in lieu of LC support, and ask that this be explicitly allowed. Bluewater Wind argues for \$100/kw cap on Operational Security as being more reasonable than the IC's proposed cap. Delmarva should explain why it is necessary and equitable to have such broad additional discretion regarding credit support or propose that this be deleted or limited.

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DEPT OF PUBLIC

ADVOCATE

Security requirements should be softened to reflect more conventional security arrangements of power purchase agreements.

WHAT IS THE

APPROPRIATE LEVEL OF

SECURITY?

DEVELOPMENT

SECURITY?

OPERATIONAL

SECURITY? SECOND LIEN

OPTION?

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11. Term Sheet

Whose term sheet?

- Delmarva
- Consultants redline

STAFF

~~Staff supports the use of the redline markup as provided on September 26, 2006, with changes to reflect recommended changes in the consultant's final decision (from the draft initial decision), and as may be changed to further reflect this proceeding~~
Staff supports the use of the redline markup as provided on September 26, 2006 and as may be changed to further reflect this proceeding. Non-negotiable items should be identified with all others being negotiable. The number and importance of requested changes can impact the evaluation process with less changes being more highly valued.

DELMARVA

~~Key items that Delmarva will identify from the Term Sheet should be non-negotiable/limited as approved by the Commission as part of the package. It is not appropriate for the Company to have to negotiate the PPA with the Agencies at the outset and with the bidders as well after they have submitted their bids. This process is mandated by HB 6, and bidders should have to accept the contract provisions that the PSC accepts.~~

~~Term Sheet should be non-negotiable/limited as approved by the Commission as part of the package.~~

WHICH TERM SHEET SHOULD BE USED GOING FORWARD? IS IT APPROPRIATE FOR AN ENTIRE DOCUMENT TO BE NON-NEGOTIABLE? SHOULD REQUESTED CHANGES TO THE TERMS AND CONDITONS IMPACT THE EVALUATION?

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12. Bid Evaluation

Super Categories as an alternative view

- Three critical characteristics
Economics
Favorable Characteristics
Project Viability

Point allocation adjustment

- **Environmental weighting (7 to 14 points)**
- Reliability as a point factor
- Fuel Diversity as a factor
- Quantification of contract terms
- **Transparency of process**
- **Key Assumption availability**
- Metric based on levelized prices with common set of market assumptions
- Evaluating air emissions system wide

STAFF

Staff supports the consultants approach to evaluating the bids, first on a point scale and secondly [by looking at the point scores through the framework of three larger categories that encompass all the evaluation categories—economics \(includes price and price stability\); favorable characteristics \(includes environmental impact and fuel diversity\); and project viability..as viewed by the three critical characteristics.](#) Staff supports the increase in environmental weighting and the return to 20 points for price stability. There are obviously many factors that come into play in evaluations and Staff believes the consultant's approach is very thorough. Staff believes that as much of the evaluative process as practical should be transparent to the bidders. This would include how the points would be awarded and scaled, the assumptions going into the evaluation and the source of publicly available information that was relied upon in the evaluation. Staff understands there may be proprietary models involved in the process, confidential bidding data and proposed items for negotiation, and as such agrees with the consultant that their overview, to include the state agencies, is appropriate and proprietary and confidential information will not be available for public inspection.

DELMARVA

~~Delmarva agrees to changes in environmental scoring. Objects to 3 super categories, which would serve as additional And undesirable threshold criteria. Super categories make the evaluation more judgmental and adds uncertainty and risk for bidders. No way to set category minimums and potential for bidder challenges. Adds an unnecessary level of complexity to an already complex valuation. Contract terms should not be a price factor as they are not quantifiable to \$ impact. ICF mechanism to address price stability is a recognized process. Comparing one bidder's levelized price to another with common mkt assumptions is a valid way to evaluate bids. ICF will provide unbiased evaluation of evaluation process. Delmarva does not believe it should be required to publicize its key assumptions (as is standard practice), but has agreed to discuss them with the Agencies and the IC on October 27. Full transparency is not an issue, as bidders expect their information to be treated confidentially. No time for test runs in the tight legislatively-mandated process. Close consultant oversight of Delmarva scoring and analysis is pre-regulation of the evaluation process. Delmarva accepts IC-proposed allocation of points to greenhouse gases and other pollutants. Quantification of health impacts of air emissions not practical/desirable. Consideration of air emissions system wide complicates the evaluation process with little gain. Need for objective standard to assess high, medium or low. Delmarva opposes non-price points for reliability and it is already assessed in T&D analysis in the price evaluation. Delmarva uses a rolling 3 yr descending clock auction which provides no basis for fuel diversity assessments. Objects to revised scoring method and 3 super categories. Threshold criteria serve to meet the 3 super category test. Super categories make the evaluation more judgmental and adds uncertainty and risk for bidders. No way to set category minimums and potential for bidder challenges. Adds an unnecessary level of complexity to an already complex valuation. Company opposes proposed point reallocation. Contract terms should not be a price factor as they are not quantifiable to \$ impact. ICF mechanism to address price stability is a recognized process. Comparing one bidder's levelized price to another with common mkt assumptions is a valid way to evaluate bids. IC will provide unbiased evaluation of evaluation process. Delmarva does not believe it should publicize its key assumptions. Key assumptions available only upon completion of evaluation. No time for test runs and nothing to be gained. Close consultant oversight is pre-regulation of the process. Quantification of environmental benefit not practical/desirable. Consideration of air emissions system wide complicates the evaluation process with little gain. Need for objective standard to assess high, medium or low. Delmarva opposes points for reliability and it is already assessed in T&D analysis. Delmarva uses a rolling 3-yr descending clock auction which provides no basis for fuel diversity assessments.~~

NRG ENERGY

All bidders should be given access to examine model to ensure transparency. Consultant, being behind the curtain of secrecy, seeks to give assurances and ask bidders to trust. No substitute for full transparency. Transparency is undoubtedly the key to a *competitive* RFP process (a bedrock principle underlying EURCSA). Delmarva provides virtually no information in the RFP on the modeling inputs or methodology, and effectively asks bidders to trust that bid evaluations and modeling will be completed in a just and reasonable manner.

SCS ENERGY

Staff Position reflects the Independent Consultant's (ICs) Final Report as filed on 10/12/06. Other parties comments are from initial response to Delmarva RFP and later response to the IC's draft report.

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Awarding a point if the building of a proposed facility would lead to a commitment to operate another high emission facility less, defeats legislative mandate, reward operators of dirty plants and assumes those higher emitting plants would have been allowed to continue operations.

BLUEWATER WIND

Concerned of bias/penalty to longer term PPAs. We are disappointed that price stability was actually reduced from 20 to 15 points. 20 points would seem a minimum to be assigned to price stability.

DEPT OF PUBLIC
ADVOCATE

The weighting factor should be changed to reflect “price stability” instead of “price,” and that this weight is no more than forty percent, (40%). The “reductions in environmental impact” weight should be increased, as suggested by the comments of the University of Delaware’s College of Marine Studies at the August 18, 2006 workshop. The evaluation process should include the Public Advocates Office

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(Continued)

FIRESTONE & KEMPTON

Consultants super categories elevates price to a dominant factor. Weights are off the mark with respect to the legislation particularly around price and price stability. No accounting for changed business climate (like RGGI). Less than 30 points for the two main concerns of the legislature. High reliance on price provides preference for a pulverized coal plant. Consultant failed to respond to price evaluation concerns. Consultant went from cost effective to reasonable to lowest expected price. Evaluation weighting must include known RPS and RGGI. RGGI criteria should be a threshold issue. Future costs and restrictions on carbon emissions shall explicitly be the responsibility of the bidder, not be passed on to Delmarva or the ratepayers. Price stability went from 20 points to 15 lessening the impact of a key element. Consultant references deleted section 2.3.8. Consultant did not address any of their weighting comments. Allocation of point to price is improper and unlawful. [Weighting price more than environment suggests that a \\$.01 kWh reduction in price is more highly valued than a \\$.01 kWh environmental benefit. There is no rational basis for this conclusion, rather there is reason to believe the opposite given greater number of beneficiaries from environmental benefits.](#)

GREEN DELAWARE

Biased toward solid fuel/coal generation facility. Coal generation should be disfavored as strongly as possible. Wind, solar, conservation, efficiency and sustainable resources should be favored. Coal capacity appears to be a done-deal. Need to focus on sustainable resources and demand side investments largely ignored. Expansion of environmental weighting from 7 to 14 percent is far less than satisfactory. Environmental factors should constitute at least 50% of the score. Evaluation of bid results should be entirely public information. Consultants should not work together behind closed doors

NATURAL RESOURCES DEFENSE COUNCIL

Renewable power projects may still find themselves disadvantaged by the redline RFP, contrary to the objectives of the Delaware legislature. The RFP, consistent with the statutory mandate, should thus be crafted to encourage rather than discourage renewable energy sources from participating. The RFP should identify and take into account what the cost of power will be after factoring in the added cost for allowances.

OTHERS

The citizens of Delaware interests are not being considered. There is an artificially low coal price being used in the evaluation as it does not consider the sequestration of CO2 in the process. Health costs of pollution are significant and should be considered as a bigger part of the picture. A number of organizations have joined our group in calling for cleaner air including Clean Air Council, Citizens for a Better Sussex, the Sierra Club, the Audubon Society, Rehoboth Beach AARP, the American Lung Association, etc. PLEASE GIVE WIND A FAIR CHANCE IN THE BIDDING PROCESS.

A cost analysis comparing sustainable power sources versus traditional fossil fuel/coal means CAN NOT be done in the old school way which NEGLECTS health care and environmental costs! Put into your regulations the facts: that the health care costs must be included when the cost comparisons are done. Put into your cost analysis the deaths and the disease health care costs- cardiovascular disease, cancer and asthma- even a small percentage of these costs if you must qualify it.

I write to you as a member of Citizens for Clean Power, pleading that you consider the hidden costs of coal in the bidding process. Coal's costs are passed on to the consumer and the taxpayer in a number of ways. The hidden cost of passing the carbon clean-up onto the consumer must be factored into the cost of the coal bidding process.

HOW SHOULD THE BIDS BE EVALUATED AND HOW TRANSPARENT SHOULD THAT PROCESS BE?

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COST/POINTS AND/OR
SUPER CATEGORY VIEW?
ENVIRONMENTAL
WEIGHTING OF 14 PTS?
PRICE STABILITY RATING
OF 20 PTS? AVAILABILITY
OF ASSUMPTIONS?

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13. T&D Evaluation

- **Period for evaluation** (5 yrs vs life of contract)
- Marginal Losses and congestion
- **Flexibility in dealing with losses (opportunity for cure)**

STAFF

Staff concurs with the consultant's report that if a utility has the capability to evaluate T&D impacts over a longer term, such an approach would be preferable and should include all known upgrades.

DELMARVA

Delmarva sees no reason to limit evaluation to 5 years and suggests using ICF modeling to capture the effect of required upgrades. -starting in 2011

NRG ENERGY

NRG recommends that the quantitative estimation of T&D project impacts be limited to a five-year duration. Delmarva's evaluation should take into account all transmission upgrades. NRG wants opportunity to look at retirement of existing units if losses or congestion result in disqualification.

WHAT IS THE APPROPRIATE PERIOD TO INCLUDE IN THE BID EVALUATION?

FIVE YEARS? LONGER TERM AS VALID DATA IS AVAILABLE? SHOULD BIDDERS HAVE OPPORTUNITY TO PROVIDE CURE?

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14. Imputed Debt Offset

- **A concern within the RFP**
- **30% vs 50% risk factor**

STAFF

Staff supports the use of a 30% risk factor to be used in a sensitivity analysis and suggests that Delmarva provide feedback from the various rating agencies as to how they would view the PPA, within the Delaware regulatory framework, [if the issue substantially influences bid ranking and decision making.](#)

DELMARVA

[The guidance from the S&P is to use 50% as a starting point for the imputed debt offset. Delmarva can develop different scenarios using different levels for this risk factor. S&P report clearly states one should use a 50% risk factor for imputing debt on long-term PPA, assuming adequate regulatory support. Understating the true risk would be a negative factor in ratings, which would markedly raise interest costs and harm consumers. S&P report clearly states one should use a 50% risk factor for imputing debt on long-term PPA, assuming adequate regulatory support](#)

NRG ENERGY

[IC recommendations are not supported; just an effort at compromise](#)~~No rebuttal to NRG's comments, just a recommendation to keep as sensitivity analysis. No factual support.~~ No role for sensitivity factor in evaluation. Compromise not justified. NRG offers Moody's viewpoint. Delmarva is accepting PPA as debt and could be doing so to advance self-build agenda.

SCS ENERGY

Leave out of RFP and resolve as part of discussion between Commission, Delmarva and bidder

IS IMPUTED DEBT AN RFP ISSUE? IS IT APPROPRIATE TO USE THE RISK IN A SENSITIVITY ANALYSIS?
SHOULD THE RISK FACTOR BE 50% OR 30%?

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15. Test Bidding

- State Agency Consultant
test run of bid system

STAFF

Time permitting, Staff agrees it would be helpful to all parties to run several test bids to ensure the integrity of the evaluation process. At a minimum, if time is not available, Delmarva should provide sufficient information to determine that the bid evaluation is appropriate, fair and balanced.

DELMARVA

Delmarva has agreed to meet on October 27. in advance of issuing the RFP, with the Agencies and the IC to explain the review process and identify key input assumptions, which will drive the evaluation. There is not sufficient time in the legislatively-mandated schedule to run test bids and it is not necessary as we have contracted with a notable consultant for evaluation services.

~~There is not sufficient time in the schedule to run test bids and it is not necessary as we have contracted with a notable consultant for evaluation services.~~

HOW WILL BIDDERS KNOW THE EVALUATION PROCESS IS FAIR AND EQUITABLE?
SHOULD DELMARVA CONSIDER INCORPORATING AT LEAST SOME TEST BIDS IN ITS SCHEDULE?
IF NOT SHOULD DELMARVA PROVIDE ADDITIONAL INFORMATION SUFFICIENT TO SATISFY BIDDER CONCERNS?

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16. Default Remedies

When in default

- Less than 90% UCAP for 6 months
- Less than 60% EAF for 12 months
- Failure to deliver AND wrongful sale
- 3 day notice and cure period
- Notice and cure for failure to post supplemental security
- Failure to have Resource Adequacy compliance/cost flowthru? Who pays?
-

Replacement Power

- Replacement power at Delmarva expense
- Level of replacement power coverage
- UCAP versus generation to serve SOS load

Toward end of document

STAFF

Staff supports the consultant's recommendations regarding events of default which are consistent with a unit contingent PPA findings and believes its proposal to reflect on exposure to default is easier to implement and takes into account the risk factors due to a seller's creditworthiness. Staff supports the allocation of 6 evaluative points to a category called exposure which takes into consideration not only the creditworthiness of the seller, but also the size of the proposal and the portion that is non-dispatchable (capable of ramping up or down). One should keep in mind that a contractual default, for the most part, merely exposes the buyer to current market price for replacement power.

DELMARVA

Delmarva, which proposes that bidders must bid firm energy contracts, cannot accept consultants proposed modifications. It is true that the buyer would be exposed in the case of a contractual default, but this is exactly the appropriate penalty for default. Bidders, not customers, should be at risk if the bidder defaults on its PPA. Delmarva would rely on the bidder to cover the increased costs incurred by the customer.
~~Delmarva, which proposes that bidders must bid firm energy contracts, cannot accept consultants proposed modifications. Delmarva is relying on cover damages to pay for replacement power.~~

HOW SHOULD THE RISK OF DEFAULT BE ACCOMODATED AND WHEN IS A PARTY IN DEFAULT?

DOES OPERATIONAL LETTER OF CREDIT OR PARENT GUARANTEE PROVIDE SUFFICIENT COVERAGE? SHOULD THIS BE AN EVALUATION ISSUE AND/OR SIGNIFICANT FINANCIAL PENALTY? HOW MUCH COVERAGE FOR REPLACEMENT POWER IS NEEDED?

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17. Changes after contract

- **Change in law**
- **Pass through of costs**
- **Change in Control**

STAFF

Staff supports the approach taken by the Independent Consultant with potential change in law issues. Bidders will assume change in law risk, with one exception: if there is a carbon tax or btu tax of general applicability, the should have the option of assuming the change in law risk and being more highly valued in the evaluation. Alternatively, the bidder could seek to recover cost of the taxes, but only up to the average cost imposed on all generators in the classic PJM territory. Costs over the PJM average would be born by the seller. This is a much more limited change than originally contemplated in the IC's draft report. Delmarva's revised wording for change in control [approval may not be unreasonably withheld] may be appropriate.

DELMARVA

As noted in discussions, Delmarva believes that if additional costs are imposed on the Company, then there should be a pass-through of these costs to consumers; otherwise the company is at risk for the costs of changes in law. Absent this provision, the seller should assume all change in law risk. Seller should assume all c~~Changes in law risk would be addressed in the PPA and not an issue for the RFP.~~ Delmarva believes its approval should be required for a change in control.

NRG ENERGY

In order to ensure that financing can be obtained for projects to be developed through the RFP, the provision entitled, "Compliance with Law, Environmental Risk and Indemnity," should be revised to more equitably balance the potential liabilities arising out of significant changes in law. The Independent Consultant states in its report that "[i]t is standard industry practice in long term PPAs that future environmental compliance costs that are not in the nature of a tax, pursuant to existing or future laws and regulations, would be a Seller responsibility"⁴⁹ and thereby suggests that only costs in the nature of a Btu or carbon tax be passed through to the Buyer under the PPA. NRG respectfully disagrees with this assertion as a general matter. The lack of mechanism for cost recovery is at cross purposes with Act. May result in unit shutdown as economic alternative. There are many contracts where buyer compensates seller for change in law. Can undermine seller's ability to gain financing

BLUEWATER WIND

The "pass-through" language contained in that section would render useless any price stability benefit to ratepayers of some proposals that might be received under this RFP.

FIRESTONE & KEMPTON

Bidders must contractually agree to cover all future regulatory and tax changes to achieve price stability.

GREEN DELAWARE

NATURAL RESOURCES DEFENSE COUNCIL

The provision to pass through future carbon taxes frustrates the legislative goals of securing price stability and reducing environmental impact and weakens the bid of renewable power resources who offer future ratepayers security in never subjecting them to such taxes.

OTHER

As I understand this, if a future law imposes a tax on carbon emissions, which seems quite likely as the damage caused by CO2 emissions and global warming becomes more evident, it is the customers and the taxpayers who will pay the added costs and suffer the resulting damage. In other words, a power company using coal as a fuel could be favored over one using wind by submitting a proposal with an artificially low (current) fuel cost. This is quite unfair to the citizens of Delaware and was not, I believe, what the legislature intended when it listed price stability as the most important criterion for the RFP.

Staff Position reflects the Independent Consultant's (ICs) Final Report as filed on 10/12/06. Other parties comments are from initial response to Delmarva RFP and later response to the IC's draft report.

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SHOULD BIDDERS HAVE
OPTION WITH RESPECT
TO CHANGE IN LAW?
SHOULD BIDDERS
ASSUME FULL
RESPONSIBILITY OR IS A
LEVEL OF PASS
THROUGH
APPROPRIATE?

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18. Dispute Resolution

STAFF

Staff agrees with the Independent Consultant that contract dispute resolution is a legitimate concern but beyond the normal scope of PSC responsibilities. The mixing of rate recovery authority with resolution authority can be problematic. Resolution should be by arbitration or litigation, [which is standard industry practice](#).

DELMARVA

[Delmarva believes the Commission should be the forum for dispute resolution, which is standard industry practice.](#)

~~Delmarva believes the Commission should be the dispute resolution process.~~

NRG ENERGY

The PSC should not be stipulated as the ultimate decision maker for disputes between the parties. This provision creates the appearance of an advantage for the Buyer and will make it difficult to obtain financing for the Project on standard market terms.

SHOULD THE PSC BE THE DISPUTE RESOLUTION PROCESS? IS IT APPROPRIATE FOR THE SAME BODY TO SET RATE RECOVERY MECHANISMS AND PROVIDE RELATED DISPUTE RESOLUTION?